

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED

2013 JUN 26 AM 9:59

DEPUTY CLERK

FLORA ZARATE,  
Plaintiff,

VS.

NICHOLAS CONDER;  
BATTEN & SHAW, INC.,  
Defendants.

§  
§  
§  
§  
§  
§  
§

Civil Action No. \_\_\_\_\_

**8-13CV-2437D**

**JURY TRIAL DEMANDED**

**DEFENDANTS NICHOLAS CONDER AND BATTEN & SHAW, INC.'S**

**NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW NICHOLAS CONDER AND BATTEN & SHAW, INC.,  
Defendants in the above entitled and numbered cause and files this notice of removal under  
28 U.S.C. §1446(a).

A. Introduction

1. Plaintiff is Flora Zarate, a resident of Dallas, Dallas County, Texas, who appears by and through David S. Kohm and John M. Groce, Jr. of David S. Kohm & Associates.
2. On May 24, 2013, Plaintiff sued Defendants over a motor vehicle accident. The suit was filed in the 192nd District Court of Dallas County, Texas.
3. Defendant NICHOLAS CONDOR was served with the suit on or about May 30, 2013. Defendant files this notice of removal within the 30-day time period required by 28 U.S.C. §1446(b).

4. Defendant BATTEN & SHAW, INC. was served with the suit on or about May 31, 2013. Defendant files this notice of removal within the 30-day time period required by 28 U.S.C. §1446(b).

B. Basis for Removal

5. Removal is proper because there is complete diversity between the parties. 28 U.S.C. §1332(a); *Darden v. Ford Consumer Fin. Co.*, 200 F.3d 753, 755 (11th Cir. 2000). Plaintiff is a citizen of Dallas, Dallas County, Texas. Defendant, Nicholas Condor is a citizen of Parker, Douglas County, Colorado. Defendant Batten & Shaw, Inc. is a corporation incorporated in the State of Tennessee and authorized to do business in the State of Texas. The amount in controversy exceeds \$75,000, excluding interest, costs, and attorney fees. 28 U.S.C. §1332(a). Even though the Plaintiff did not claim specific damages, on its face the damages exceed the jurisdictional limits as the plaintiff is alleging physical injuries, physical in nature. Therefore, due the severity alleged by the plaintiff, the damages incurred by the plaintiff, must exceed the jurisdictional amount in controversy of this court unless plaintiff states otherwise.

6. All pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. §1446(a).

7. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the action has been pending is located in this district.

8. Defendants will promptly file a copy of this notice of removal with the clerk of the state court where the action has been pending.

C. Jury Demand

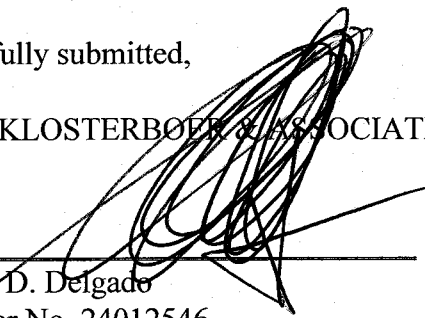
9. Plaintiff *did not* demand a jury in the state court action.

D. Conclusion

10. This Court has the proper jurisdiction on this matter as there is a complete diversity of the parties and the amount in controversy exceeds controversy exceeds \$75,000, excluding interest, costs, and attorney fees. For these reasons, Defendants NICHOLAS CONDOR and BATTEN & SHAW, INC. ask the Court to remove the action to this federal court.

Respectfully submitted,

DAVID KLOSTERBOER & ASSOCIATES



---

Vionette D. Delgado  
Texas Bar No. 24012546  
1301 E. Collins Blvd., Suite 490/LB11  
Richardson, TX 75081  
(214) 570-6300 Main  
(214) 570-6296 Direct  
(214) 570-6262 Fax  
[vdelgado@travelers.com](mailto:vdelgado@travelers.com)

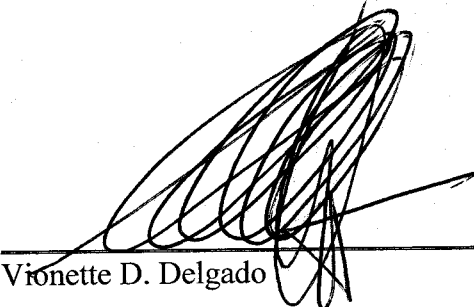
**CERTIFICATE OF SERVICE**

This is to certify that, on this the 26th day of June, 2013, a true and correct copy of the foregoing document was forwarded to all counsel of record as follows:

David S. Kohm  
John M. Groce, Jr.  
David S. Kohm & Associates  
1414 W. Randol Mill Road, Suite 118  
Arlington, Texas 76012  
*Facsimile 817-861-8900*

<input type="checkbox"/>	Hand Delivery
<input checked="" type="checkbox"/>	Facsimile
<input type="checkbox"/>	Certified Mail, Return Receipt Requested
<input type="checkbox"/>	Receipted Commercial Delivery
<input type="checkbox"/>	Regular U.S. Mail

*Attorney for Plaintiff,  
Flora Zarate*

  
\_\_\_\_\_  
Vionette D. Delgado

**CAUSE NO. DC-13-05741**

<b>FLORA ZARATE,</b>	§	<b>IN THE DISTRICT COURT</b>
<b>PLAINTIFF,</b>	§	
	§	
<b>VS.</b>	§	<b>192ND JUDICIAL DISTRICT</b>
	§	
<b>NICHOLAS CONDER AND BATTEN</b>	§	
<b>&amp; SHAW, INC.,</b>	§	
<b>DEFENDANTS.</b>	§	<b>DALLAS COUNTY, TEXAS</b>

**STATE COURT ACTION DOCUMENT INDEX**

1. State Court Action Docket Sheet – Register of Actions
2. Plaintiff's Original Petition and Plaintiff's Request for Disclosure to Defendants, Plaintiff's First Requests for Production to Defendant, Plaintiff's Interrogatories to Defendants - filed on 5/24/2013
3. Issue Citation for Nicholas Conder and Batten & Shaw, Inc. – filed on 5/24/2013
4. Civil Case Information Sheet – filed on 5/24/2013
5. Executed Citation – Defendant Nicholas Conder – filed on 5/28/2013; served on 5/30/2013; returned on 6/11/2013
6. Executed Citation - Defendant Batten & Shaw, Inc. – filed on 5/28/2013; served on 5/31/2013; returned on 6/11/2013
7. Defendants' Original Answer – General Denial – E-filed on 6/14/2013
8. Court's Mediation Order – filed on June 19, 2013
9. Court's Pre-Trial Order – filed on June 19, 2013

Skip to Main Content Logout My Account Search Menu New Civil District Search Refine  
Search Back

Location : All District Civil Courts Images Help

## REGISTER OF ACTIONS

CASE NO. DC-13-05741

FLORA ZARATE vs. NICHOLAS CONDER, et al

§  
§  
§  
§  
§

Case Type: **MOTOR VEHICLE  
ACCIDENT**  
Date Filed: **05/24/2013**  
Location: **192nd District Court**

### PARTY INFORMATION

DEFENDANT BATTEN & SHAW INC

**Lead Attorneys**  
**VIONETTE D DELGADO**  
*Retained*  
214-570-6300(W)

DEFENDANT CONDER, NICHOLAS

**VIONETTE D DELGADO**  
*Retained*  
214-570-6300(W)

PLAINTIFF ZARATE, FLORA

**DAVID S KOHM**  
*Retained*  
817-861-8400(W)

### EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS			
05/24/2013	<u>ORIGINAL PETITION (OCA)</u>		
05/24/2013	<u>ISSUE CITATION</u>		
05/24/2013	<u>CASE FILING COVER SHEET</u>		
05/28/2013	<u>CITATION</u>		
	EL/ATTY		
	CONDER, NICHOLAS	Served	05/30/2013
		Returned	06/11/2013
	BATTEN & SHAW INC	Served	05/31/2013
		Returned	06/11/2013
06/14/2013	<u>ORIGINAL ANSWER - GENERAL DENIAL</u>		
06/19/2013	<u>ORDER - MEDIATION</u>		
	Vol./Book 471K, Page 962, 2 pages		
06/19/2013	<u>ORDER - PRETRIAL</u>		
	Vol./Book 471K, Page 971, 1 pages		
06/02/2014	<u>Non Jury Trial</u> (9:00 AM) (Judicial Officer SMITH, CRAIG)		

### FINANCIAL INFORMATION

	<b>PLAINTIFF ZARATE, FLORA</b>		
	Total Financial Assessment		268.00
	Total Payments and Credits		268.00
	<b>Balance Due as of 06/25/2013</b>		<b>0.00</b>
05/24/2013	Transaction		252.00
	Assessment		
05/24/2013	Transaction		16.00
	Assessment		
05/24/2013	PAYMENT (CASE FEES)	Receipt # 29671-2013-DCLK	KOHM, DAVID S (268.00)

NO. 13-0574

FILED

FILED

2013 MAY 24 AM 10:10

IN THE DISTRICT COURT

GARY FITZSIMMONS  
DISTRICT CLERK  
DALLAS CO., TEXAS

GARY FITZSIMMONS  
DISTRICT CLERK  
DALLAS CO., TEXAS

DALLAS COUNTY, TEXAS

DEPUTY

FLORA ZARATE

Plaintiff,

V.

NICHOLAS CONDER;  
BATTEN & SHAW, INC.

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

K-192nd

JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND**  
**PLAINTIFF'S REQUEST FOR DISCLOSURE TO DEFENDANTS**  
**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO DEFENDANTS**  
**PLAINTIFF'S INTERROGATORIES TO DEFENDANTS**

**TO THE HONORABLE JUDGE OF SAID COURT:**

NOW COMES Flora Zarate, (hereinafter called "Plaintiff"), complaining of and about Nicholas Conder and Batten & Shaw, Inc., Defendants, (hereinafter called "Defendants"), and for cause of action shows unto the Court the following:

**DISCOVERY CONTROL PLAN LEVEL**

1. Pursuant to Texas Rule of Civil Procedures Rule 47, Plaintiff seeks monetary relief over \$100,000 but not more than \$200,000. Therefore, Plaintiff intends that discovery be conducted under Discovery Level 2. Accordingly Plaintiff's Request for Disclosure to Defendants, Plaintiff's Interrogatories to Defendants, and Plaintiff's Request for Production to Defendants are attached.

### **PARTIES AND SERVICE**

2. Plaintiff Flora Zarate is an individual who resides in Dallas County, Texas. Plaintiff Flora Zarate's last three digits of her social security number is 227. The last three digits of her Texas driver's license number is 111.

3. Defendant Nicholas Conder is a resident of the State of Colorado and may be served with process at 8831 Apache Plume Drive, Parker, Colorado, 80134, Pursuant to Section 17.062 of the Texas Civil Practices and Remedies Code, the Chair of the Texas Transportation Commission, Ted Houghton, is an agent of process for Defendant Nicholas Conder because this suit arises from a collision in which Defendant Nicholas Conder was operating a motor vehicle on the public roads of the State of Texas.

4. Defendant Batten & Shaw, Inc., is foreign corporation organized and existing under the laws of the State of Texas. Plaintiff is suing Batten & Shaw, Inc., in its common name pursuant to Texas Rules of Civil Procedure 28. Batten & Shaw, Inc. may be served with process, via private process on its registered agent Corporation Service company, d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7<sup>th</sup> St., Ste. 620, Austin, TX 78701-3218.

### **JURISDICTION AND VENUE**

5. The subject matter in controversy is within the jurisdictional limits of this court.

6. Venue in Dallas County is proper because that is where the accident occurred.

### **MISNOMER/ALTER-EGO**

8. In the event any parties are misnamed or not included herein, it is Plaintiff's contention that such was a "misnomer" and/or such parties are/were "alter egos" of parties named herein.



### FACTS

9. On or about August 31, 2011 Plaintiff Flora Zarate was driving a vehicle southbound on Preston Road, Dallas, Dallas County, Texas. Defendant Nicholas Conder, while in the scope of employment of Defendant Batten & Shaw, Inc., was driving a vehicle owned by Defendant Batten & Shaw, Inc., and was driving a vehicle behind Plaintiff. Plaintiff was stopped at a red light when Defendant Nicholas Conder, who had been drinking alcohol, and was driving without a valid driver's license, failed to control his speed and pay proper attention, failed to timely apply his brakes, and collided into the rear of Plaintiff's vehicle. Defendants' negligence was the sole and proximate cause of the accident subject of this suit and Plaintiff's damages.

### PLAINTIFF'S CLAIMS OF NEGLIGENCE AGAINST NICHOLAS CONDER

10. Defendant Nicholas Conder had a duty to exercise the degree of care that a reasonably careful person would use to avoid harm to others under circumstances similar to those described herein.

11. Plaintiff's injuries were proximately caused by said Defendant's negligent, careless and reckless disregard of said duty.

12. The negligent, careless and reckless disregard of duty of said Defendant consisted of, but is not limited to, the following acts and omissions:

- A. In that said Defendant failed to take proper evasive action;
- B. In that said Defendant failed to keep such distance away from other motor vehicles on the roadway as a person using ordinary prudent care would have done;

- C. In that said Defendant failed to control his vehicle as an ordinary person would have done in this circumstance so as to avoid colliding into other vehicles on the roadway;
- D. In that said Defendant failed to control his speed and pay proper attention;
- E. In that said Defendant was driving a vehicle without a valid driver's license;
- F. In that said Defendant was operating a vehicle while intoxicated and/or was under the influence of alcohol or a controlled substance; and
- F. In that said Defendant failed to timely apply his brakes.

### NEGLIGENCE PER SE

13. At the time of the incident in question, and immediately prior thereto, Defendant had a duty to comply with that standard of care set forth by Texas Penal Code §49.04. Plaintiff would show that the conduct of Defendant constitutes a violation of Sections 49.07 and 49.08 of the Texas Penal Code. The conduct of Defendant also violated various provisions of the Texas Transportation Code including, but not limited to, the following: §545.401(a), and Defendant failed to exercise the mandatory standard of care in violation of Transportation Code, Sections 545.401(a) and the Texas Penal Code Sections 49.04(a) and 49.07 pursuant to the doctrine of *negligence per se*, which mandates that:

- §545.401(a) A person commits an offense if the person drives a vehicle in willful or wanton disregard for the safety of persons or property.
- §49.04(a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.
- §49.07 A person commits an offense if the person, by accident or mistake while operating a motor vehicle in a public place while intoxicated, by reason of that intoxication causes serious bodily injury to another.

**PLAINTIFF'S CLAIM OF GROSS NEGLIGENCE  
AGAINST DEFENDANT NICHOLAS CONDER**

14. Plaintiff also claims that Defendant, Nicholas Conder is guilty of gross negligence and/or malice pursuant to Texas law existing at the time of the incident in question.

15. More specifically, Defendant's speed, driving his vehicle while intoxicated, lack of attention, and recklessness in the operation of his motor vehicle at the time of the incident in question was such an act of carelessness and recklessness that it resulted in the collision with Plaintiff.

16. Such gross negligence and entire want of care for the safety and welfare of others amounts to conscious disregard for the safety and welfare of others on the roadway and is gross negligence and/or malice as that term is known and defined by Texas law.

17. Furthermore, such gross negligence and/or malice gives rise to Defendant's liability to Plaintiff for exemplary/punitive damages, which Plaintiff prays for herein.

**PLAINTIFF'S CLAIM OF NEGLIGENT ENTRUSTMENT AGAINST  
BATTEN & SHAW, INC.**

18. Defendant Batten & Shaw, Inc. had a duty to exercise the degree of care that a reasonably careful person would use to avoid harm to others under circumstances similar to those described herein.

19. The negligent, careless and reckless disregard of duty of said Defendant consisted of, but is not limited to, the following acts and omissions:

- A. In that Defendant negligently entrusted a vehicle to a reckless driver.
- B. Plaintiff pleads that Defendant negligently entrusted a vehicle to a known unsafe, unlicensed, or incompetent driver.

**PLAINTIFF'S CLAIM OF RESPONDEAT SUPERIOR AGAINST  
BATTEN & SHAW, INC.**

20. At the time of the occurrence of the act in question and immediately prior thereto, Defendant Nicholas Conder was within the course and scope of employment for Defendant, Batten & Shaw, Inc.

21. At the time of the occurrence of the act in question and immediately prior thereto, Defendant Nicholas Conder was engaged in the furtherance of Defendant Batten & Shaw, Inc.

22. At the time of the occurrence of the act in question and immediately prior thereto, Defendant Nicholas Conder was engaged in accomplishing a task for which Batten & Shaw, Inc. was employed.

23. Plaintiff invokes the doctrine of *Respondeat Superior* against Batten & Shaw, Inc.

**DAMAGES FOR PLAINTIFF FLORA ZARATE**

24. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff Flora Zarate was caused to suffer injuries to her head, neck, back, and her body in general, and to incur the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services Dallas County, Texas;
- B. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;

- C. Physical pain and suffering in the past;
- D. Physical pain and suffering in the future;
- E. Mental anguish in the past;
- F. Mental anguish in the future;
- G. Physical impairment in the past;
- H. Physical impairment in the future;
- I. Lost wages in the past;
- J. Lost earning capacity in the past & future;
- K. Exemplary/punitive damages as alleged herein.

**PLAINTIFFS' REQUEST FOR DISCLOSURE TO DEFENDANT**

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are requested to disclose, within 50 days of service of this request, the information or material as set forth in Texas Rules of Civil Procedure 194.2 (a)-(l). A response to a request under Rule 194.2 is due according to Rule 195.2 of the Texas Rules of Civil Procedure.

The disclosures must be signed in accordance with Texas Rules of Civil Procedure, Rule 191.3, and delivered to the undersigned attorney. If you fail to comply with the requirements above, the Court may order sanctions against you in accordance with the Texas Rules of Civil Procedure.

18. Billing records for the month of August 2011, which includes the date of August 31, 2011, for each cellular telephone owned or operated by you at the time of the collision made the basis of this suit.

19. Defendant's complete driving record for the 10 years preceding the incident made the basis of this suit, or an executed authorization allowing Plaintiffs or his counsel to obtain such documents.

20. For each consulting expert whose work product or opinions have been reviewed or relied upon by a testifying expert in this case, please produce all documents reflecting the expert's name, address and telephone number and the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, the expert's current resume and bibliography, and all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the consulting expert in connection with this case.

21. Documents sufficient to identify each claim made against Defendant in the State of Texas in the last ten years that are similar to the claims made by Plaintiffs, i.e. where an individual is alleged to have been injured or damaged as a result of Defendant's negligent operation of a motor vehicle.

22. If Defendant was acting in the course and scope of employment with any person or entity at the time of the collision in question, all personnel records of Defendant for the ten year period preceding the incident in question through the present date including all incident and accident reports contained in Defendant's employer's files.

23. Copies of all procedures or manuals used in evaluation of Plaintiffs claim used by Defendant, his employees, agents, or representatives, made the basis of this lawsuit.

24. Produce a full and complete certified copy of all liability insurance policies issued by any insurance company in which Defendant is a named insured and/or a covered person/entity or company that were in full force at the date and/or the time of the occurrence in question.

25. Produce a full and complete certified declaration page for all liability insurance policies issued by any insurance company in which Defendant is a named insured and/or a covered person/entity or company that were in full force at the date and/or the time of the occurrence in question.

26. Produce a full and complete copy of all applications for all liability insurance policies issued by any insurance company in which Defendant is a named insured and/or a covered person/entity or company that were in full force at the date and/or the time of the occurrence in question.

NO. \_\_\_\_\_

FLORA ZARATE

Plaintiff,

V.

NICHOLAS CONDER;  
BATTEN & SHAW, INC.

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND**  
**PLAINTIFF'S REQUEST FOR DISCLOSURE TO DEFENDANTS**  
**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO DEFENDANTS**  
**PLAINTIFF'S INTERROGATORIES TO DEFENDANTS**

**TO THE HONORABLE JUDGE OF SAID COURT:**

NOW COMES Flora Zarate, (hereinafter called "Plaintiff"), complaining of and about Nicholas Conder and Batten & Shaw, Inc., Defendants, (hereinafter called "Defendants"), and for cause of action shows unto the Court the following:

**DISCOVERY CONTROL PLAN LEVEL**

1. Pursuant to Texas Rule of Civil Procedures Rule 47, Plaintiff seeks monetary relief over \$100,000 but not more than \$200,000. Therefore, Plaintiff intends that discovery be conducted under Discovery Level 2. Accordingly Plaintiff's Request for Disclosure to Defendants, Plaintiff's Interrogatories to Defendants, and Plaintiff's Request for Production to Defendants are attached.

### **PARTIES AND SERVICE**

2. Plaintiff Flora Zarate is an individual who resides in Dallas County, Texas. Plaintiff Flora Zarate's last three digits of her social security number is 227. The last three digits of her Texas driver's license number is 111.

3. Defendant Nicholas Conder is a resident of the State of Colorado and may be served with process at 8831 Apache Plume Drive, Parker, Colorado, 80134, Pursuant to Section 17.062 of the Texas Civil Practices and Remedies Code, the Chair of the Texas Transportation Commission, Ted Houghton, is an agent of process for Defendant Nicholas Conder because this suit arises from a collision in which Defendant Nicholas Conder was operating a motor vehicle on the public roads of the State of Texas.

4. Defendant Batten & Shaw, Inc., is foreign corporation organized and existing under the laws of the State of Texas. Plaintiff is suing Batten & Shaw, Inc., in its common name pursuant to Texas Rules of Civil Procedure 28. Batten & Shaw, Inc. may be served with process, via private process on its registered agent Corporation Service company, d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7<sup>th</sup> St., Ste. 620, Austin, TX 78701-3218.

### **JURISDICTION AND VENUE**

5. The subject matter in controversy is within the jurisdictional limits of this court.

6. Venue in Dallas County is proper because that is where the accident occurred.

### **MISNOMER/ALTER-EGO**

8. In the event any parties are misnamed or not included herein, it is Plaintiff's contention that such was a "misnomer" and/or such parties are/were "alter egos" of parties named herein.



### FACTS

9. On or about August 31, 2011 Plaintiff Flora Zarate was driving a vehicle southbound on Preston Road, Dallas, Dallas County, Texas. Defendant Nicholas Conder, while in the scope of employment of Defendant Batten & Shaw, Inc., was driving a vehicle owned by Defendant Batten & Shaw, Inc., and was driving a vehicle behind Plaintiff. Plaintiff was stopped at a red light when Defendant Nicholas Conder, who had been drinking alcohol, and was driving without a valid driver's license, failed to control his speed and pay proper attention, failed to timely apply his brakes, and collided into the rear of Plaintiff's vehicle. Defendants' negligence was the sole and proximate cause of the accident subject of this suit and Plaintiff's damages.

### PLAINTIFF'S CLAIMS OF NEGLIGENCE AGAINST NICHOLAS CONDER

10. Defendant Nicholas Conder had a duty to exercise the degree of care that a reasonably careful person would use to avoid harm to others under circumstances similar to those described herein.

11. Plaintiff's injuries were proximately caused by said Defendant's negligent, careless and reckless disregard of said duty.

12. The negligent, careless and reckless disregard of duty of said Defendant consisted of, but is not limited to, the following acts and omissions:

- A. In that said Defendant failed to take proper evasive action;
- B. In that said Defendant failed to keep such distance away from other motor vehicles on the roadway as a person using ordinary prudent care would have done;

- C. In that said Defendant failed to control his vehicle as an ordinary person would have done in this circumstance so as to avoid colliding into other vehicles on the roadway;
- D. In that said Defendant failed to control his speed and pay proper attention;
- E. In that said Defendant was driving a vehicle without a valid driver's license;
- F. In that said Defendant was operating a vehicle while intoxicated and/or was under the influence of alcohol or a controlled substance; and
- F. In that said Defendant failed to timely apply his brakes.

### NEGLIGENCE PER SE

13. At the time of the incident in question, and immediately prior thereto, Defendant had a duty to comply with that standard of care set forth by Texas Penal Code §49.04. Plaintiff would show that the conduct of Defendant constitutes a violation of Sections 49.07 and 49.08 of the Texas Penal Code. The conduct of Defendant also violated various provisions of the Texas Transportation Code including, but not limited to, the following: §545.401(a), and Defendant failed to exercise the mandatory standard of care in violation of Transportation Code, Sections 545.401(a) and the Texas Penal Code Sections 49.04(a) and 49.07 pursuant to the doctrine of *negligence per se*, which mandates that:

§545.401(a) A person commits an offense if the person drives a vehicle in willful or wanton disregard for the safety of persons or property.

§49.04(a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.

§49.07 A person commits an offense if the person, by accident or mistake while operating a motor vehicle in a public place while intoxicated, by reason of that intoxication causes serious bodily injury to another.

**PLAINTIFF'S CLAIM OF GROSS NEGLIGENCE  
AGAINST DEFENDANT NICHOLAS CONDER**

14. Plaintiff also claims that Defendant, Nicholas Conder is guilty of gross negligence and/or malice pursuant to Texas law existing at the time of the incident in question.

15. More specifically, Defendant's speed, driving his vehicle while intoxicated, lack of attention, and recklessness in the operation of his motor vehicle at the time of the incident in question was such an act of carelessness and recklessness that it resulted in the collision with Plaintiff.

16. Such gross negligence and entire want of care for the safety and welfare of others amounts to conscious disregard for the safety and welfare of others on the roadway and is gross negligence and/or malice as that term is known and defined by Texas law.

17. Furthermore, such gross negligence and/or malice gives rise to Defendant's liability to Plaintiff for exemplary/punitive damages, which Plaintiff prays for herein.

**PLAINTIFF'S CLAIM OF NEGLIGENT ENTRUSTMENT AGAINST  
BATTEN & SHAW, INC.**

18. Defendant Batten & Shaw, Inc. had a duty to exercise the degree of care that a reasonably careful person would use to avoid harm to others under circumstances similar to those described herein.

19. The negligent, careless and reckless disregard of duty of said Defendant consisted of, but is not limited to, the following acts and omissions:

- A. In that Defendant negligently entrusted a vehicle to a reckless driver.
- B. Plaintiff pleads that Defendant negligently entrusted a vehicle to a known unsafe, unlicensed, or incompetent driver.

**PLAINTIFF'S CLAIM OF RESPONDEAT SUPERIOR AGAINST  
BATTEN & SHAW, INC.**

20. At the time of the occurrence of the act in question and immediately prior thereto, Defendant Nicholas Conder was within the course and scope of employment for Defendant, Batten & Shaw, Inc.

21. At the time of the occurrence of the act in question and immediately prior thereto, Defendant Nicholas Conder was engaged in the furtherance of Defendant Batten & Shaw, Inc.

22. At the time of the occurrence of the act in question and immediately prior thereto, Defendant Nicholas Conder was engaged in accomplishing a task for which Batten & Shaw, Inc. was employed.

23. Plaintiff invokes the doctrine of *Respondeat Superior* against Batten & Shaw, Inc.

**DAMAGES FOR PLAINTIFF FLORA ZARATE**

24. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff Flora Zarate was caused to suffer injuries to her head, neck, back, and her body in general, and to incur the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services Dallas County, Texas;
- B. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;

- C. Physical pain and suffering in the past;
- D. Physical pain and suffering in the future;
- E. Mental anguish in the past;
- F. Mental anguish in the future;
- G. Physical impairment in the past;
- H. Physical impairment in the future;
- I. Lost wages in the past;
- J. Lost earning capacity in the past & future;
- K. Exemplary/punitive damages as alleged herein.

**PLAINTIFFS' REQUEST FOR DISCLOSURE TO DEFENDANT**

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are requested to disclose, within 50 days of service of this request, the information or material as set forth in Texas Rules of Civil Procedure 194.2 (a)-(l). A response to a request under Rule 194.2 is due according to Rule 195.2 of the Texas Rules of Civil Procedure.

The disclosures must be signed in accordance with Texas Rules of Civil Procedure, Rule 191.3, and delivered to the undersigned attorney. If you fail to comply with the requirements above, the Court may order sanctions against you in accordance with the Texas Rules of Civil Procedure.

**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION**

"DEFENDANTS" **NICHOLAS CONDER AND BATTEN & SHAW, INC.**, (hereinafter called "Defendant") pursuant to Rule 196 of the Texas Rules of Civil Procedure, are requested to respond to Plaintiffs' attorneys, (as undersigned below) on or before 50 days after service of this original petition and first requests for production, the following documents and things:

Defendants are hereby requested to produce originals or true, correct, complete, legible and unaltered copies of the following items:

1. The front and back of your driver's license.
2. The title to the vehicle you were driving at the time of the collision made the basis of this suit.
3. Any and all photographs, slides, motion pictures, videotapes and other films that Defendant has of the vehicles, parties or scene in question following the collision made the basis of this suit.
4. All records of any type indicating that there were any mechanical or cosmetic problems or repairs concerning the vehicles involved in the collision in question during the twelve months preceding the collision.
5. Any and all accident or incident reports prepared in connection with the incident in question.
6. All exhibits Defendant will introduce at trial.
7. All records obtained from claims reporting services, including but not limited to the Southwest Index Bureau (SWIB) and Choicepoint Consumer Center (CLUE), regarding the Plaintiffs.
8. Any and all records obtained from past or present employers of Plaintiff for use in this litigation.
9. The Defendant's claim file(s) relative to the claim made the basis of this suit, prepared and compiled up to the date this suit was filed in this Court, including but not limited to all notes, records, entries, documents, memos, correspondence, photographs, videotapes, and written information contained therein.

10. All documents which Defendant may use under Texas Rules of Evidence to impeach testimony given by Plaintiffs or other witnesses in this case.
11. All documents reflecting medical reviews or audits conducted on Plaintiff's medical treatment or expenses, including correspondence between defendant and/or his insurance company and counsel and medical review personnel.
12. All accident reconstruction reports prepared by or for Defendant in connection with the collision made the basis of this suit.
13. Any and all repair estimates concerning repairs to the vehicles involved in the collision made the basis of this lawsuit for damages sustained in the collision in question.
14. Documentation of any property damage or personal property damage payment(s) made to Plaintiffs or Defendant in connection with the collision made the basis of this suit.
15. Documents reflecting the disposition of any traffic citation you received in connection with the collision made the basis of this suit.
16. Documents sufficient to identify the charge and resolution of any of your criminal convictions for felony offenses or crimes involving moral turpitude within the past ten years.
17. Documents sufficient to identify and describe any corrective lenses used by you or prescribed for you at the time of the collision made the basis of this suit.
18. Billing records for the month of August 2011, which includes the date of August 31, 2011, for each cellular telephone owned or operated by you at the time of the collision made the basis of this suit.
19. Defendant's complete driving record for the 10 years preceding the incident made the basis of this suit, or an executed authorization allowing Plaintiffs or his counsel to obtain such documents.
20. For each consulting expert whose work product or opinions have been reviewed or relied upon by a testifying expert in this case, please produce all documents reflecting the expert's name, address and telephone number and the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, the expert's current resume and bibliography, and all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the consulting expert in connection with this case.

21. Documents sufficient to identify each claim made against Defendant in the State of Texas in the last ten years that are similar to the claims made by Plaintiffs, i.e. where an individual is alleged to have been injured or damaged as a result of Defendant's negligent operation of a motor vehicle.
22. If Defendant was acting in the course and scope of employment with any person or entity at the time of the collision in question, all personnel records of Defendant for the ten year period preceding the incident in question through the present date including all incident and accident reports contained in Defendant's employer's files.
23. Copies of all procedures or manuals used in evaluation of Plaintiffs claim used by Defendant, his employees, agents, or representatives, made the basis of this lawsuit.
24. Produce a full and complete certified copy of all liability insurance policies issued by any insurance company in which Defendant is a named insured and/or a covered person/entity or company that were in full force at the date and/or the time of the occurrence in question.
25. Produce a full and complete certified declaration page for all liability insurance policies issued by any insurance company in which Defendant is a named insured and/or a covered person/entity or company that were in full force at the date and/or the time of the occurrence in question.
26. Produce a full and complete copy of all applications for all liability insurance policies issued by any insurance company in which Defendant is a named insured and/or a covered person/entity or company that were in full force at the date and/or the time of the occurrence in question.
27. Produce a full and complete certified copy of all umbrella and/or excess and/or secondary liability insurance policies issued by any insurance company in which Defendant is a named insured and/or a covered person/entity or company that were in full force at the date and/or the time of the occurrence in question.
28. Produce a full and complete certified declaration page for all umbrella and/or excess and/or secondary liability insurance policies issued by any insurance company in which Defendant is a named insured and/or a covered person/entity or company that were in full force at the date and/or the time of the occurrence in question.
29. Produce a full and complete copy of all applications for all umbrella and/or excess and/or secondary liability insurance policies issued by any insurance company in which Defendant is a named insured and/or a covered person/entity or company that were in full force at the date and/or the time of the occurrence in question.



30. Produce a full and complete certified copy(s) of any and all insurance agreements and/or policies, including, but not limited to, primary, umbrella, personal umbrella, excess, secondary policies (and including all endorsements, schedules and amendments) applicable to the date, incident or claims in question (regardless of whether on a claims made or occurrence basis) potentially obligating any insurance company(s) to pay a potential judgment in this case for the claims asserted against the Defendant.

31. In the event the claims upon which the lawsuit is based are being handled by any insurance carrier under a reservation of rights, please produce a full and complete copy of all communications to and from the carrier(s) concerning any and all such reservations.

32. In the event the pertinent policies are aggregate policies and the annual aggregates have been reduced, please produce a copy of any and all settlement documents and/or agreements relevant to the payment of such claims that have caused any reduction of such aggregates.

33. In the event the pertinent policies are "wasting" policies (for example, the payment by the insurance carrier of the defense attorney's fees and costs and expenses reduce the available liability policy limits), please produce a copy of any and all documents, invoices, receipts and canceled checks relevant to the payment of such defense litigation costs and expenses that have caused any reduction of such liability policy limits.

34. Full and complete copies of any and all documents and records concerning the Plaintiff that were obtained by and/or in the possession of Defendant from any source.

35. Full and complete copies of any and all medical records and information concerning the Plaintiff that were obtained by and/or in the possession of Defendant from any source.

36. Full and complete copies of any and all medical bills concerning the Plaintiffs that were obtained by and/or in the possession of Defendant from any source.

37. Full and complete copies of any and all depositions on written questions including all exhibits, records and documents and things attached thereto from any person, company, entity, or source obtained by and/or in the possession of Defendant from any source concerning any issue or party or witness or potential witness in this case.

38. Full and complete copies of any and all employment records and documents concerning the Plaintiff that were obtained by and/or in the possession of Defendant from any source.

39. Full and complete copies of any and all medical information and/or records and/or documentation, including but not limited to medical records, medical expenses, x-rays or any other diagnostic test, employment records, criminal records, social security records, divorce/family law related records, educational records, unemployment records, disability records, health insurance records and/or any other insurance records or information, concerning the Plaintiffs that were obtained by and/or in the possession of Defendant through deposition, deposition on written questions, subpoena, court order, authorization or any other source.

### **INTERROGATORIES**

TO: "DEFENDANTS"

Please take notice that pursuant to Rules 192 and 197 of the Texas Rules of Civil Procedure, Plaintiffs serve the attached interrogatories to be propounded to Defendants **NICHOLAS CONDER AND BATTEN & SHAW, INC.** You are hereby instructed to answer the following interrogatories separately, fully, in writing, and under oath if required by Rule 197.2(d) of the Texas Rules of Civil Procedure. The answers shall be served upon the undersigned counsel within 50 days after the service of these interrogatories.

Your failure to make timely answers or objections may subject you to sanctions as provided in Rule 215 of the Texas Rules of Civil Procedure. Furthermore, demand is made for the supplementation of your answers to these interrogatories as required by Rule 193.5 of the Texas Rules of Civil Procedure.

#### **INTERROGATORY NO. 1:**

Please state the full name, address, telephone number, date of birth, driver's license number, social security number, and occupation of the person answering these interrogatories.

**ANSWER:**

#### **INTERROGATORY NO. 2:**

Please give the name, address and telephone number of 1) the operator and 2) the owner of the motor vehicle which was involved in the collision made the basis of this lawsuit?

ANSWER:

**INTERROGATORY NO. 3:**

Please state whether or not any insurer has denied you coverage, or indicated that it is reserving its right to deny coverage, refuses to provide a defense, or refuses to pay all or part of any judgment, and, if so, please identify every document containing or referring to any such denial, refusal, or reservation of rights.

ANSWER:

**INTERROGATORY NO. 4:**

Please state the amount of liability coverage on the vehicle which you owned or were driving at the time of the accident subject of this lawsuit.

ANSWER:

**INTERROGATORY NO. 5:**

List all criminal arrests and/or charges against you, your predecessors, affiliates, or subsidiaries, or divisions by giving the cause number; identities of all accused; court of jurisdiction; description of criminal charges; date and place of arrest; plea made; date of trial and/or plea bargain; whether or not convicted and on what charges; time served; date of release from confinement; whether or not granted pardon or parole, and if so, date pardon granted or parole was or will be successfully completed.

ANSWER:

**INTERROGATORY NO. 6:**

For any consulting experts whose mental impressions and opinions have been reviewed by a testifying expert, please state or provide all the discovery authorized by Rule 192.3(e). A complete answer will include a list of all witness fees paid within the past five years.

ANSWER:

**INTERROGATORY NO. 7:**

Do you, your attorneys or investigators or anyone acting on your behalf, have any maps, charts, diagrams, photographs, videos, motion pictures, and/or recordings taken of the scene of this incident, or of any of the physical or mechanical objects, or of the person involved in this incident? If yes, then please indicate your willingness to allow Plaintiffs to inspect and copy or photograph the same.

**ANSWER:**

**INTERROGATORY NO. 8:**

Please state completely and fully all representations, statements, declarations or admissions made by any Plaintiff herein or any agent, servant or employee of Plaintiff(s). Include in your answer when the communication was made, the total verbatim communication and, if that is not possible, then state the detailed substance of the communication, by whom the communication was made, where such communication took place, and all persons present when such communication was made.

**ANSWER:**

**INTERROGATORY NO. 9:**

Please identify (by title, author, editor, edition, publisher, date of publication, section, portion, and page) every published treatises, periodical, or pamphlet on a subject of history, medicine, or other science or art that you may offer to use in the trial of this case under Rule 803(18) of the Texas Rules of Evidence.

**ANSWER:**

**INTERROGATORY NO. 10:**

Do you contend that any personal injuries or damages sustained by any Plaintiff herein was caused by an occurrence other than this accident, such as a disease or physical condition, either before or after the incidents made the basis of this case? If so, describe in detail such other occurrence, disease, injury or condition.

**ANSWER:**

**INTERROGATORY NO. 11:**

Do you contend that any Plaintiff herein or third party violated any traffic laws at the time or immediately prior to the collision? If so, describe what you contend to be the violation or give the statute number of the violation.

**ANSWER:**

**INTERROGATORY NO. 12:**

If you contend that the collision in question was an "unavoidable accident," describe in detail what you believe to be the cause of the accident, to the exclusion of the conduct of any Plaintiff or Defendant.

**ANSWER:**

**INTERROGATORY NO. 13:**

If you contend that someone else's conduct or something else is the "sole proximate cause" of the accident in question, describe in detail the identity of that person, or what exactly caused the collision.

**ANSWER:**

**INTERROGATORY NO. 14:**

Do you intend to attempt to impeach any Plaintiff herein, or any employee, agent, representative, attorney or any other natural person or business or legal entity associated in any way with or acting or purporting to act for or on behalf of any Plaintiff herein, with evidence of a criminal conviction, if any, as described in Rule 609 of the Texas Rules of Evidence? If so, please describe in detail such evidence, giving name of accused, nature of conviction and charges on which convicted, year of conviction and whether or not parole has been successfully completed or pardon granted.

**ANSWER:**

**INTERROGATORY NO. 15:**

State the Style, Court and Cause number of any lawsuit you have been a party to and the final disposition of said suit.

**ANSWER:**

**INTERROGATORY NO. 16:**

Please state where Defendant had been just prior to the collision, where Defendant was going at the time of the collision, and the purpose of the trip.

**ANSWER:**

**INTERROGATORY NO. 17:**

Please state any and all traffic violations Defendant has had in the ten (10) years preceding this collision. Please indicate if Defendant had his driving license revoked due to any of these violations and the period of time his license was revoked.

**ANSWER:**

**INTERROGATORY NO. 18:**

Please state whether Defendant has had any other motor vehicle accidents in the past ten (10) years. If so, please list the date and location of such accident, the parties involved and a factual description of the accident.

**ANSWER:**

**INTERROGATORY NO. 19:**

Please give a detailed description of exactly how the collision made the basis of the lawsuit occurred. Please indicate in your description the speed or estimated speed that the vehicles were traveling at the time of the incident. On the back of this sheet, please draw a diagram to indicate the location of the accident and the direction that the vehicles were traveling at the time of the collision.

ANSWER:

INTERROGATORY NO. 20:

Please indicate the speed or estimated speed that the vehicles were traveling at the time of the incident, including your speed at the time of the impact, and if you contend you applied your brakes prior to impact, and what speed you were traveling prior to applying your brakes.

ANSWER:

INTERROGATORY NO. 21:

Describe any defect that you believe, or have reason to believe, was present in the road or in the marking or signage on the road that either caused or contributed to the collision in question.

ANSWER:

INTERROGATORY NO. 22:

Describe any belief that you may hold that the weather or a weather condition was a factor or contributed in any way to the collision in question.

ANSWER:

INTERROGATORY NO. 23:

Where you in the course and scope of your employment at the time of the accident? If so, state the full name, telephone number, address and your immediate supervisor for your employer and indicate if you hold or held any ownership interest in this business.

ANSWER:

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff Flora Zarate respectfully prays that Defendants Nicholas Conder and Batten & Shaw, Inc. be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants for damages consistent in keeping with this pleading; together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which Plaintiff may be entitled at law or in equity.

Respectfully submitted,

DAVID S. KOHM & ASSOCIATES  
1414 W. Randol Mill Road, Suite 118  
Arlington, Texas 76012  
(817) 861-8400 - Telephone  
(817) 861-8900 - Fax

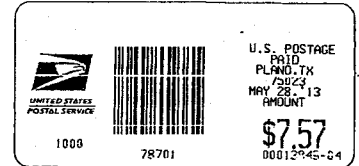
By: 

David S. Kohm  
State Bar No. 11658563  
John M. Groce, Jr.  
State Bar No. 00793860

**ATTORNEYS FOR PLAINTIFF**



Legal Document Management  
3010 LBJ Freeway, Suite 1200  
Dallas, TX 75234



FIRST CLASS

SCRIPT  
AND

CORPORATION SERVICE COMPANY  
211 E. 7<sup>TH</sup> ST. #620  
AUSTIN, TX 78701

**FORM NO. 353-3 - CITATION  
THE STATE OF TEXAS**

To: **BATTEN & SHAW INC ITS REGISTERED AGENT CORPORATION SERVICE  
COMPANY DBA CSC-LAWYERS INCORPORATING SERVICE COMPANY  
211 E. 7<sup>TH</sup> ST STE 620  
AUSTIN TX 78701-3218**

**GREETINGS:**

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 192nd District Court at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **FLORA ZARATE**

Filed in said Court **24th day of May, 2013** against

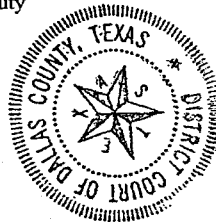
**NICHOLAS CONDER, ETAL**

For Suit, said suit being numbered **DC-13-05741**, the nature of which demand is as follows:  
Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **DISCOVERY ATTACHED**,  
a copy of which accompanies this citation. If this citation is not served, it shall be returned  
unexecuted.

WITNESS: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County Texas.  
Given under my hand and the Seal of said Court at office this 28th day of May, 2013.

ATTEST: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County, Texas

By *Evette Lamb*, Deputy  
EVETTE LAMB



ATTY

**CITATION**

**DC-13-05741**

**FLORA ZARATE  
vs.  
NICHOLAS CONDER, et al**

**ISSUED THIS  
28th day of May, 2013**

**GARY FITZSIMMONS  
Clerk District Courts,  
Dallas County, Texas**

By: EVETTE LAMB, Deputy

**Attorney for Plaintiff  
DAVID S KOHM  
DAVID S KOHM & ASSOCIATES  
1414 W RANDOL MILL RD STE 118  
ARLINGTON TX 76012  
817-861-8400**

### OFFICER'S RETURN

Case No. : DC-13-05741

Court No. 192nd District Court

Style: FLORA ZARATE

vs.

NICHOLAS CONDER, et al

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M. Executed at \_\_\_\_\_  
within the County of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M. on the \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_\_, by delivering to the within named \_\_\_\_\_

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by  
me in serving such process was \_\_\_\_\_ miles and my fees are as follows: To certify which witness my hand.

For serving Citation	\$ _____	_____
For mileage	\$ _____	of _____ County, _____
For Notary	\$ _____	By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public \_\_\_\_\_ County \_\_\_\_\_

**FORM NO. 353-3 - CITATION  
THE STATE OF TEXAS**

To: **NICHOLAS CONDER**  
**8831 APACHE PLUME DR**  
**PARKER CO 80134**

**GREETINGS:**

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 192nd District Court at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **FLORA ZARATE**

Filed in said Court **24th day of May, 2013** against

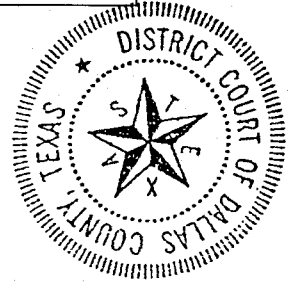
**NICHOLAS CONDER, ETAL**

For Suit, said suit being numbered **DC-13-05741**, the nature of which demand is as follows:  
Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **DISCOVERY ATTACHED**,  
a copy of which accompanies this citation. If this citation is not served, it shall be returned  
unexecuted.

WITNESS: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County Texas.  
Given under my hand and the Seal of said Court at office this 28th day of May, 2013.

ATTEST: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County, Texas

By *Evette Lamb*, Deputy  
EVETTE LAMB



ATTY

**CITATION**

**DC-13-05741**

**FLORA ZARATE**

vs.

**NICHOLAS CONDER, et al**

ISSUED THIS

**28th day of May, 2013**

**GARY FITZSIMMONS**

Clerk District Courts,  
Dallas County, Texas

By: **EVETTE LAMB**, Deputy

**Attorney for Plaintiff**

**DAVID S KOHM**

**DAVID S KOHM & ASSOCIATES**  
**1414 W RANDOL MILL RD STE 118**  
**ARLINGTON TX 76012**  
**817-861-8400**

**DALLAS COUNTY CONSTABLE**

**FEEES  
PAID**

**FEES NOT  
PAID**

## OFFICER'S RETURN

Case No. : DC-13-05741

Court No. 192nd District Court

Style: FLORA ZARATE

vs.

NICHOLAS CONDER, et al

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M. Executed at \_\_\_\_\_  
within the County of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M. on the \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_\_, by delivering to the within named \_\_\_\_\_

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by  
me in serving such process was \_\_\_\_\_ miles and my fees are as follows: To certify which witness my hand.

For serving Citation

\$ \_\_\_\_\_

For mileage

\$ \_\_\_\_\_

of \_\_\_\_\_ County,

For Notary

\$ \_\_\_\_\_

By \_\_\_\_\_ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said \_\_\_\_\_

before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

to certify which witness my hand and seal of office.

Notary Public \_\_\_\_\_

County \_\_\_\_\_

**FORM NO. 353-3 - CITATION  
THE STATE OF TEXAS**

To: **BATTEN & SHAW INC ITS REGISTERED AGENT CORPORATION SERVICE  
COMPANY DBA CSC-LAWYERS INCORPORATING SERVICE COMPANY  
211 E. 7<sup>TH</sup> ST STE 620  
AUSTIN TX 78701-3218**

**GREETINGS:**

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 192nd District Court at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **FLORA ZARATE**

Filed in said Court 24th day of May, 2013 against

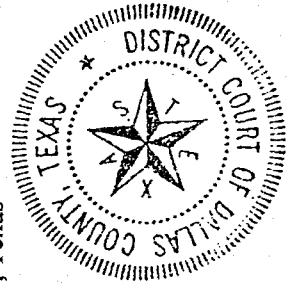
**NICHOLAS CONDER, ETAL**

For Suit, said suit being numbered **DC-13-05741**, the nature of which demand is as follows:  
Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **DISCOVERY ATTACHED**,  
a copy of which accompanies this citation. If this citation is not served, it shall be returned  
unexecuted.

WITNESS: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County Texas.  
Given under my hand and the Seal of said Court at office this 28th day of May, 2013.

ATTEST: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County, Texas

By , Deputy  
EVETTE LAMB



ATTY

**CITATION**

**DC-13-05741**

**FLORA ZARATE**

vs.

**NICHOLAS CONDER, et al**

ISSUED THIS

**28th day of May, 2013**

**GARY FITZSIMMONS**  
Clerk District Courts,  
Dallas County, Texas

By: **EVETTE LAMB**, Deputy

**Attorney for Plaintiff**

**DAVID S KOHM**

**DAVID S KOHM & ASSOCIATES**  
1414 W RANDOL MILL RD STE 118  
ARLINGTON TX 76012  
817-861-8400

**DALLAS COUNTY CONSTABLE**

**FEEES  
PAID**

**FEES NOT  
PAID**

## OFFICER'S RETURN

Case No. : DC-13-05741

Court No.192nd District Court

Style: FLORA ZARATE

vs.

NICHOLAS CONDER, et al

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M. Executed at \_\_\_\_\_  
within the County of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M. on the \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_, by delivering to the within named \_\_\_\_\_

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by  
me in serving such process was \_\_\_\_\_ miles and my fees are as follows: To certify which witness my hand.

For serving Citation	\$ _____	_____
For mileage	\$ _____	of _____ County, _____
For Notary	\$ _____	By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public \_\_\_\_\_ County \_\_\_\_\_

STYLED

Flora Zarate v. Nicholas Conder, et al

(e.g., John Smith v. All American Insurance Co.; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b>  Name: <u>David S. Kohm &amp; Associates</u> Email: <u>lawfirm@attorneykohm.com</u>  Address: <u>1414 W. Randol Mill Rd., Ste. 120</u> Telephone: <u>(817) 861-8400</u>  City/State/Zip: <u>Arlington, Texas 76012</u> Fax: <u>(817) 861-8900</u>  Signature: <u>[Signature]</u> State Bar No: <u>11658563</u>		<b>Names of parties in case:</b>  Plaintiff(s)/Petitioner(s): <u>Flora Zarate</u>  Defendant(s)/Respondent(s): <u>Nicholas Conder; Batten + Shaw, INC</u>  (Attach additional page as necessary to list all parties)		<b>Person or entity completing sheet is:</b> <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: <u>NS</u>  Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>					
<b>Civil</b>			<b>Family Law</b>		
<b>Contract</b> <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract:  <b>Foreclosure</b> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	<b>Injury or Damage</b> <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input checked="" type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage:	<b>Real Property</b> <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property:  <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	<b>Marriage Relationship</b> <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children  <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	<b>Post-judgment Actions (non-Title IV-D)</b> <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other  <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order  <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
<b>Employment</b> <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:		<b>Other Civil</b> <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:			
<b>Tax</b> <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		<b>Probate &amp; Mental Health</b> <b>Probate/Wills/Intestate Administration</b> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:			
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
<b>4. Indicate damages sought (do not select if it is a family law case):</b> <input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input checked="" type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					



**FORM NO. 353-3 - CITATION  
THE STATE OF TEXAS**

To: NICHOLAS CONDER  
8831 APACHE PLUME DR  
PARKER CO 80134

**GREETINGS:**

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 192nd District Court at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **FLORA ZARATE**

Filed in said Court **24th day of May, 2013** against

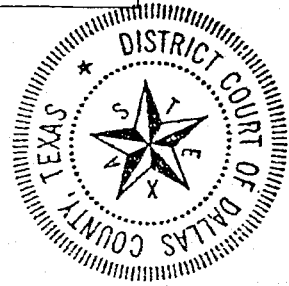
**NICHOLAS CONDER, ETAL**

For Suit, said suit being numbered **DC-13-05741**, the nature of which demand is as follows:  
Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **DISCOVERY ATTACHED**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County Texas.  
Given under my hand and the Seal of said Court at office this 28th day of May, 2013.

ATTEST: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County, Texas

By *Evette Lamb*, Deputy  
EVETTE LAMB



**FILED**

**13 JUN 11 AM 11:13**

GARY FITZSIMMONS  
DISTRICT CLERK  
DALLAS CO., TEXAS

DEPUTY

ATTY

**CITATION**

**DC-13-05741**

**FLORA ZARATE**

vs.

**NICHOLAS CONDER, et al**

ISSUED THIS

**28th day of May, 2013**

**GARY FITZSIMMONS**

Clerk District Courts,  
Dallas County, Texas

By: **EVETTE LAMB**, Deputy

**Attorney for Plaintiff**

**DAVID S KOHM**

**DAVID S KOHM & ASSOCIATES**  
1414 W RANDOL MILL RD STE 118  
ARLINGTON TX 76012  
817-861-8400

**DALLAS COUNTY CONSTABLE**

**FEES  
PAID**

**FEES NOT  
PAID**

# OFFICER'S RETURN

Case No. : DC-13-05741

Court No. 192nd District Court

Style: FLORA ZARATE

vs.

NICHOLAS CONDER, et al

Came to hand on the 28 day of May, 20 13, at 12:00 o'clock P. Executed at 125 E. 11th St., Austin, TX 78701  
 within the County of Travis at 7:29 o'clock A M. on the 30 day of May

20 13, by delivering to the within named

Nicholas Conder by serving Texas Transportation Commission  
by certified mail 7012 3650 0002 1964 1230

each, ~~in person~~ a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was \_\_\_\_\_ miles and my fees are as follows: To certify which witness my hand.

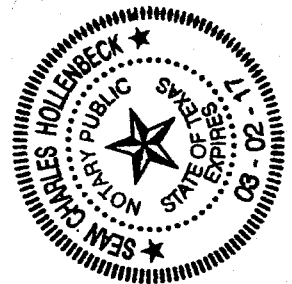
For serving Citation \$ 75  
 For mileage \$ 0  
 For Notary \$ 0

of Dallas County, TX  
 By [Signature] 10:55 Deputy

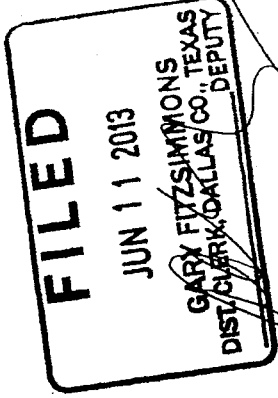
(Must be verified if served outside the State of Texas.) Exp: 7/31/14

Signed and sworn to by the said QUANG HA before me this 10<sup>th</sup> day of JUNE, 20 13

to certify which witness my hand and seal of office.



[Signature]  
 Notary Public Denton County TX



SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

PageID 45

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

NICHOLAS CONDER C/O  
TEXAS TRANSPORTATION COMMISSION  
ATTN: TED HOUGHTON, CHAIR  
125 E. 11TH ST.  
AUSTIN, TX 78701

A. Signature

Christopher B. Santa

☒ Agent☐ Addressee

B. Return address (if not same as addressee)

C. Date of Delivery

MAY 30 2013

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7012 3050 0002 1964 1230

PS Form 3811, February 2004

Domestic Return Receipt

102-95-02-M-1540

FILED

13 JUN 11 AM 11:13

**FORM NO. 353-3 - CITATION  
THE STATE OF TEXAS**

To: **BATTEN & SHAW INC ITS REGISTERED AGENT CORPORATION SERVICE COMPANY DBA CSC-LAWYERS INCORPORATING SERVICE COMPANY**  
211 E. 7<sup>TH</sup> ST STE 620  
AUSTIN TX 78701-3218

**GREETINGS:**

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 192nd District Court at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **FLORA ZARATE**

Filed in said Court 24th day of May, 2013 against

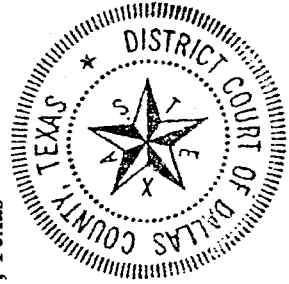
**NICHOLAS CONDER, ETAL**

For Suit, said suit being numbered **DC-13-05741**, the nature of which demand is as follows:  
Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **DISCOVERY ATTACHED**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County Texas.  
Given under my hand and the Seal of said Court at office this 28th day of May, 2013.

ATTEST: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County, Texas

By *Evette Lamb*, Deputy  
EVETTE LAMB



ATTY

**CITATION**

**DC-13-05741**

**FLORA ZARATE**

vs.

**NICHOLAS CONDER, et al**

ISSUED THIS  
28th day of May, 2013

GARY FITZSIMMONS  
Clerk District Courts,  
Dallas County, Texas

By: EVETTE LAMB, Deputy

**Attorney for Plaintiff**

DAVID S KOHM  
DAVID S KOHM & ASSOCIATES  
1414 W RANDOL MILL RD STE 118  
ARLINGTON TX 76012  
817-861-8400

**DALLAS COUNTY CONSTABLE**

**FEES  
PAID**

**FEES NOT  
PAID**

OFFICER'S RETURN

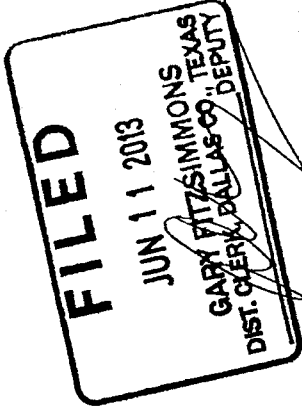
Case No. : DC-13-05741

Court No.192nd District Court

Style: FLORA ZARATE

VS.

NICHOLAS CONDER, et al



Came to hand on the 28 day of May, 2013, at 12:00 o'clock P. M. Executed at 211 E. 7th St. #620, Austin, TX 78701  
 within the County of Travis at 7:53 o'clock A. M. on the 31 day of May

20 13, by delivering to the within named  
Batten & Shaw Inc by serving registered agent Cogeneration Service Company  
by certified mail 7/12 3050 600.2 1974 1254

each, ~~in person~~, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was \_\_\_\_\_ miles and my fees are as follows: To certify which witness my hand.

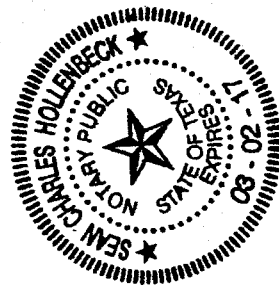
For serving Citation	\$ <u>75</u>
For mileage	\$ <u>0</u>
For Notary	\$ <u>0</u>

of Dallas County, TX  
 By [Signature] ID: 555 Deputy  
 (Must be verified if served outside the State of Texas.)

Signed and sworn to by the said QUANG HA before me this 10<sup>th</sup> day of JUNE, 2013

to certify which witness my hand and seal of office.

[Signature]



Notary Public DENTON County TX

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

PageID 48

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.  
■ Print your name and address on the reverse so that we can return the card to you.  
■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BATTEN & SHAW INC  
c/o CORPORATION SERVICE COMPANY  
211 E. 7<sup>TH</sup> ST. #620  
AUSTIN, TX 78701

A. Signature

X SA Vertrees  
SA Vertrees

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

5/3/13

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7012 3050 0002 1964 1254

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

CAUSE NO. DC-13-05741

FLORA ZARATE,	§	IN THE DISTRICT COURT
PLAINTIFF,	§	
	§	
VS.	§	192ND JUDICIAL DISTRICT
	§	
NICHOLAS CONDER AND BATTEN	§	
& SHAW, INC.,	§	
DEFENDANTS.	§	DALLAS COUNTY, TEXAS

**DEFENDANTS' ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME, Nicholas Conder and Batten & Shaw, Inc., Defendants in the above-entitled and numbered cause, and in response to Plaintiff's Original Petition state to the Court and jury the following:

**I.**

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants enter this General Denial, and Defendants deny generally, each and every, all and singular, the allegations contained in Plaintiff's Original Petition and demand strict proof thereof.

WHEREFORE, PREMISES CONSIDERED, Defendants having fully answered herein, pray that Plaintiff take nothing by reason of this suit, that Defendants go hence without day and recover costs of Court, and for such other and further relief, both general and special, at law and in equity, to which Defendants may be justly entitled.

Respectfully Submitted,

DAVID KLOSTERBOER & ASSOCIATES

  
\_\_\_\_\_  
VIONETTE DELGADO

Texas Bar No. 24012546

1301 E. Collins Blvd., Suite 490

Richardson, TX 75081

Direct Telephone: 214-570-6296

Main Telephone: 214-570-6300

Facsimile: 214-570-6262

ATTORNEYS FOR DEFENDANTS

NICHOLAS CONDER AND BATTEN &  
SHAW, INC.

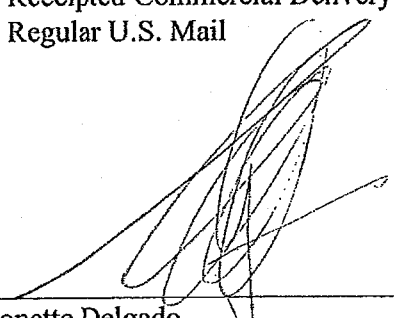
**CERTIFICATE OF SERVICE**

This is to certify that, on this the 14<sup>th</sup> day of June, 2013, a true and correct copy of the foregoing document was forwarded to all counsel of record as follows:

David S. Kohm  
David S. Kohm & Associates  
1414 W. Randol Mill Road, Suite 118  
Arlington, Texas 76012  
Facsimile 817-861-8900

*Attorney for Plaintiff,  
Flora Zarate*

\_\_\_\_ Hand Delivery  
\_\_\_\_ ☒ Facsimile  
\_\_\_\_ Certified Mail, Return Receipt Requested  
\_\_\_\_ Receipted Commercial Delivery  
\_\_\_\_ Regular U.S. Mail

  
\_\_\_\_\_  
Vionette Delgado



DAVID KLOSTERBOER & ASSOCIATES  
1301 E. COLLINS BLVD., SUITE 490  
RICHARDSON, TEXAS 75081

VIONETTE DELGADO  
ATTORNEY AT LAW  
vdelgado@travelers.com

*Not a Partnership or Professional Corporation.  
All attorneys are Employees of The Travelers  
Indemnity Company  
And its Property Casualty Affiliates*

DIRECT TEL: (214) 570-6296  
MAIN TEL: (214) 570-6300  
FACSIMILE: (214) 570-6262

June 14, 2013

Via E-Filing

Clerk of the Court  
192nd Judicial District Court  
600 Commerce Street, Suite 101  
Dallas, Texas 75202

Re: Cause No. DC-13-05741  
*Flora Zarate v. Nicholas Conder; Batten & Shaw, Inc.*  
In the 192nd Judicial District Court of Dallas County, Texas  
Our File No. 2013040481

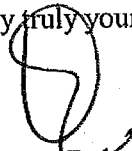
Dear Clerk:

Enclosed for filing please find *Defendants' Original Answer*. Please file this pleading with the Court's papers in this matter and return a file-marked copy to my office via our e-filing service.

By copy of this correspondence, I am forwarding same to all counsel of record.

Thank you for your assistance in this regard.

Very truly yours,



Vionette Delgado

VDD/clf  
Enclosure

cc: Via Facsimile: 817-861-8900  
David S. Kohm  
David S. Kohm & Associates  
1414 W. Randol Mill Road, Suite 118  
Arlington, Texas 76012

000962

FLORA ZARATE  
vs.  
NICHOLAS CONDER, et al

DC-13-05741

§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT  
DALLAS COUNTY, TEXAS  
192<sup>nd</sup> JUDICIAL DISTRICT

**MEDIATION ORDER**

This case is appropriate for mediation pursuant to Section 154.001 et seq. of the Texas Civil Practice and Remedies Code J STEPHEN HUNNICUTT @ Work: 214-361-6740, Fax: 214-691-5099 is appointed mediator in the above case and all counsel are directed to contact mediator to arrange the logistics of mediation within 7 days from the date of this Order. Any objection to this Order must be filed and served upon all parties and the mediator, and a hearing must be requested, within 10 days from the date of receipt of this Order; an objection that is neither timely filed nor ruled upon before the scheduled mediation may be waived.

Mediation is a mandatory but non-binding settlement conference, conducted with the assistance of the mediator. Mediation is private, confidential and privileged from process and discovery. After mediation, the court will be advised by the mediator, parties and counsel, only that the case did or did not settle. The mediator shall not be a witness nor may the mediator's records be subpoenaed or used as evidence. No subpoenas, citations, writs, or other process shall be served at or near the location of any mediation session, upon any person entering, leaving or attending any mediation session.

The mediator will negotiate a reasonable fee with the parties which shall be divided and borne equally by the parties unless agreed otherwise, paid by the parties directly to the mediator, and taxed as costs. If the parties do not agree upon the fee requested by the mediator, the court will set a reasonable fee, which shall be taxed as costs. Each party and their counsel will be bound by the rules for mediation printed on the reverse hereof, and shall complete the information forms as are furnished by the mediator.

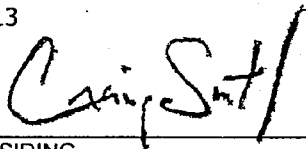
Named parties shall be present during the entire mediation process and each corporate party must be represented by an executive officer with authority to negotiate a settlement. Counsel, the parties and the mediator shall agree upon a mediation date within 20 days from the date of this order. If no date can be agreed upon within the 20 day period, the mediator shall select a date for the mediation and all parties shall appear as directed by the mediator.

The date scheduled by the mediator is incorporated in this Order as the date upon which the mediation shall occur. In any event, the mediation shall be conducted no later than May 02, 2014.

Failure or refusal to attend the mediation as scheduled may result in the imposition of sanctions, as permitted by law, which may include dismissal or default judgment. Failure to mediate will not be considered cause for continuance of the trial date. Referral to mediation is neither a substitute for nor a cause for delay of trial, and the case will be tried if not settled.

A report regarding the outcome of the mediation session is to be mailed by the mediator to the court, with a copy to the ADR Coordinator, immediately after the mediation session.

Signed June 19, 2013



JUDGE PRESIDING

cc: Counsel of Record  
Mediator

#### RULES FOR MEDIATION

1. Definition of Mediation. Mediation is a process under which an impartial person, the mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The mediator may suggest ways of resolving the dispute, but may not impose his own judgment on the issues for that of the parties.

2. Conditions Precedent to Serving a Mediator. The mediator shall not serve as a mediator in any dispute in which he has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties.

3. Authority of Mediator. The mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute by the parties. The mediator is authorized to conduct joint and separate meetings with the parties and to offer suggestions to assist the parties achieve settlement. If necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice, arrangements for obtaining such advice shall be made by the mediator of the parties, as the mediator shall determine.

4. Parties Responsible for Negotiating Their Own Settlement. The parties understand that the mediator will not and cannot impose a settlement in their case. The mediator, as an advocate for settlement, will use every effort to facilitate the negotiations of the parties. The mediator does not warrant or represent that settlement will result from the mediation process.

5. Authority of Representatives. Party representatives must have authority to settle and all persons necessary to the decision to settle shall be present. The names and addresses of such persons shall be communicated in writing to all parties and the mediator.

6. Time and Place of Mediation. The mediator shall fix the time of each mediation session. The mediation shall be held at the office of the mediator or at any other convenient location agreeable to the mediator and the parties, as the mediator shall determine.

7. Identification of Matters in Dispute. Prior to the first scheduled mediation session, each party shall provide the mediator and all attorneys of record with an information sheet and request for mediation on the form provided by the mediator setting forth its position with regard to the issues that need to be resolved. At or before the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented. The mediator may require any party to supplement such information.

8. Privacy. Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

9. Confidentiality. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports or other documents received by a mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum except as may be provided in Section 154.073 of the Texas Civil Practice and Remedies Code. Any party that violates this order may be subject to the imposition of sanctions as may be permitted by law. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding: A) Views expressed or suggestions made by another party with respect to a possible settlement of the dispute; B) Admissions made by another party in the course of the mediation proceedings; C) Proposals made or views expressed by the mediator; or D) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

10. No Stenographic Record. There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session.

11. No Service of Process At or Near The Site of The Mediation Session. No Subpoenas, summons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending or leaving the session.

12. Termination of Mediation. The mediation shall be terminated: A) By the execution of a settlement agreement by the parties; B) By declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or C) After the completion of one full mediation session, by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

13. Interpretation and Application of Rules. The mediator shall interpret and apply these rules.

14. Fees and Expenses. The mediator's daily fee, if agreed upon prior to mediation, shall be paid in advance of each mediation day. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including fees and expenses of the mediator, and the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

000971



192nd District Court  
George L Allen, Sr. Courts Building  
600 Commerce Street  
Dallas, Texas 75202-4627

Chambers of Judge Craig Smith

**PRE-TRIAL ORDER**

DC-13-05741

FLORA ZARATE

vs.

NICHOLAS CONDER, et al

This case is set for Non-Jury Trial on June 02, 2014 @ 9:00 A.M.

This date was chosen because it seems realistic based on the information on file. You should consider this to be a final setting and be prepared to go to trial.

Alternative Dispute Resolution ("ADR") by Mediation is to be accomplished according to the existing ADR Order.

Discovery is to be commenced, accomplished and completed pursuant to Texas Rule of Civil Procedure 190 et seq.

No continuances of the trial setting or the discovery deadline will be granted except upon good cause shown following a hearing on a Motion of Continuance.

Trial announcements must be made in accordance with Rule 3.02 et seq., Dallas Civil Court Rules.

No dispositive motions will be heard within 30 days of the trial date. Any Daubert/Robinson Challenges must be set and heard no later than 30 days before trial.

Plaintiff/Plaintiff's counsel shall serve a copy of this Order on any currently named defendant(s) answering after this date.

Signed June 19, 2013

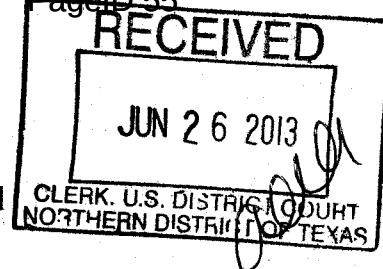
A handwritten signature in black ink, appearing to read "Craig Smith", written over a horizontal line.

DISTRICT JUDGE

United States District Court

Northern District of Texas

ORIGINAL



**Supplemental Civil Cover Sheet For Cases Removed  
From State Court**

**3-13CV-2437D**

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S.  
District Clerk's Office. Additional sheets may be used as necessary.

**1. State Court Information:**

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

<u>Court</u>	<u>Case Number</u>
192 <sup>nd</sup> Judicial District Court of Dallas County	DC-13-05741

**2. Style of the Case:**

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

<u>Party and Party Type</u>	<u>Attorney(s)</u>
Flora Zarate (Plaintiff)	David S. Kohm Texas Bar No. 11658563 John M. Groce, Jr. Texas Bar No. 00793860 David S. Kohm & Associates 1414 W. Randol Mill Road, Suite 118 Arlington, Texas 76012 (817) 861-8400 – Main (817) 861-8900 – Fax
Nicholas Conder (Defendant)	Vionette D. Delgado David Klosterboer & Associates 1301 E. Collins Blvd., Suite 490 Richardson, Texas 75081 (214) 570-6300 – Main (214) 570-6296 – Direct (214) 570-6262 – Fax Texas Bar Number: 24012546

Batten & Shaw, Inc. (Defendant)

Vionette D. Delgado  
Texas Bar Number: 24012546  
David Klosterboer & Associates  
1301 E. Collins Blvd., Suite 490  
Richardson, Texas 75081  
(214) 570-6300 – Main  
(214) 570-6296 – Direct  
(214) 570-6262 – Fax

3. **Jury Demand:**

Was a Jury Demand made in State Court? ☐ Yes ☒ No

If "Yes," by which party and on what date?

\_\_\_\_\_  
Party

\_\_\_\_\_  
Date

4. **Answer:**

Was an Answer made in State Court? ☒ Yes ☐ No

If "Yes," by which party and on what date?

Defendants Nicholas Conder and  
Batten & Shaw, Inc.  
Party

06/14/2013  
Date

5. **Unserved Parties:**

The following parties have not been served at the time this case was removed:

Party

Reason(s) for No Service

Not applicable

6. **Nonsuited, Dismissed or Terminated Parties:**

Please indicate any changes from the style on the State Court papers and the reason for that change:

Party

Reason

Not applicable

7. **Claims of the Parties:**

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claim(s)</u>
Plaintiff	Automobile Accident. Alleges negligence. Alleges negligence per se. Alleges gross negligence. Alleges negligent entrustment. Alleges Respondeat Superior.

JS 44 (Rev. 09/11)

## CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of maintaining the local docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

FLORA ZARA **3-13CV-2437D**

## DEFENDANTS

NICHOLAS CONDER; BATTEN &amp; SHAW

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS(b) County of Residence of First Listed Plaintiff Dallas County, TX

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Douglas County, CO

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

David S. Kohm, John M. Groce, Jr., DAVID S. KOHM & ASSOCIATES,  
1414 W. Randol Mill Road, Suite 118, Arlington, TX 76012; (817)  
861-8400

Attorneys (If Known)

Vionette D. Delgado, DAVID KLOSTERBOER & ASSOCIATES, 1301  
E. Collins Blvd., Suite 490, Richardson, TX 75081; (214) 570-6300

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                                   |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1332(a)

Brief description of cause:

Motor vehicle accident causing injuries

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$  
200,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) PENDING OR CLOSED:

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/26/2013

SIGNATURE OF ATTORNEY OF RECORD

/s/ VIONETTE D. DELGADO

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE



**DAVID KLOSTERBOER & ASSOCIATES**

1301 E. COLLINS BLVD., SUITE 490  
RICHARDSON, TEXAS 75081

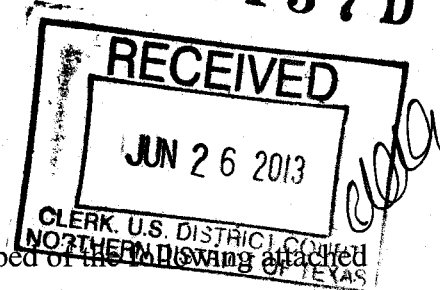
**VIONETTE DELGADO**  
ATTORNEY AT LAW  
vdelgado@travelers.com

*Not a Partnership or Professional Corporation.  
All attorneys are Employees of The Travelers  
Indemnity Company  
And its Property Casualty Affiliates*

DIRECT TEL: (214) 570-6296  
MAIN TEL: (214) 570-6300  
FACSIMILE: (214) 570-6262

**TO:**  
**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF TEXAS**  
**DALLAS DIVISION**  
**1100 COMMERCE STREET, ROOM 1452**  
**DALLAS, TX 75242**

**3-13CV-2437D**



Please file original plus one copy and have one copy file-stamped of the following attached documents:

- Civil Cover Sheet;
- Supplemental Civil Cover Sheet;
- Defendants Nicholas Conder and Batten & Shaw, Inc.'s Notice of Removal;
- Certificate of Interested Parties.

A \$400 check is also attached for the filing fee.

**Please return file-stamped copy to our office today.**

**Billing Information:**

Send Invoice to the attention of  
Vionette Delgado  
David Klosterboer & Associates  
1301 E. Collins Blvd., Suite 490  
Richardson, Texas 75081  
Claim No. 532 AB CMB5226 K

Should you have any questions, please contact Yvonne White at (214) 570-6299. Thank you.